

**ORDINANCE NO. 10-05**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REPEALING AND REPLACING CHAPTER 93 OF THE CITY CODE TO BE REFERRED TO AS "THE CITY OF DELRAY BEACH CABLE TELEVISION ORDINANCE"; PROVIDING A CODIFICATION CLAUSE; PROVIDING FOR AUTHORITY FOR CABLE TELEVISION SYSTEMS TO OPERATE, CONSTRUCT AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE RIGHTS-OF-WAY OF THE CITY OF DELRAY BEACH, FLORIDA; PROVIDING PROCEDURES, REQUIREMENTS, AND FEES RELATING TO CABLE TELEVISION TO REFLECT CHANGES IN APPLICABLE LAW TO BETTER ENSURE THAT USE OF CITY STREETS BY CABLE SYSTEMS SERVES THE PUBLIC INTEREST; PROVIDING FOR CUSTOMER SERVICE REQUIREMENTS; PROVIDING A CONFLICTS CLAUSE; A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

WHEREAS, because of the enactment of certain amendments to the Communications Act of 1934 and amendments thereto including, but not limited to, the Telecommunications Act of 1996, judicial decisions, revisions to federal Communications Commission rules, revisions to State of Florida Statutes, and changes and developments in cable television technology, business, and services, the scope and substance of municipal regulatory authority over cable television franchises has been modified; and

WHEREAS, Adelphia Cable Partners, L.P. and National Cable Acquisition Associates, L.P., subsidiaries of Adelphia Communications Corporation ("Adelphia") are the holders of non-exclusive cable television franchises and said Franchisee has requested renewal of its Franchises; and

WHEREAS, the City may determine that award of additional cable television Franchises are in the public interest; and

WHEREAS, the City Commission of the City of Delray Beach, Florida, deems it necessary to amend the City Code of the City of Delray Beach, Florida, by amending the Ordinance to take into account the afore-described changes and developments and to better ensure that use of City Streets by cable systems serves the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, THAT:

**Section 1. Chapter 93, "Cable Television" of the Code of Ordinances of the City of Delray Beach is hereby repealed in its entirety and replaced by a new Chapter 93, "Cable Television" to read as follows:**

**Section 93.01 Short Title.**

This Ordinance shall be known and may be cited as The City of Delray Beach Cable Television Ordinance.

**Section 93.02 Definitions.**

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any Franchise Agreement that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq., and as hereinafter amended (collectively the "Communications Act"), and, if not defined therein, their common and ordinary meaning.

(a) "Access Channel" means any channel on a Cable System set aside without charge by the Franchisee for public, educational and/or local governmental use.

(b) "Affiliate" means any person who owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

(c) "Applicant" means any person submitting an application as defined herein.

(d) "Application" means any proposal, submission or request to (1) construct and operate a Cable System within the City; (2) sell, assign or otherwise transfer a Franchise or transfer control of the Franchisee; (3) renew a Franchise; (4) modify a Franchise; or (5) seek any other relief from the City pursuant to this Ordinance, a Franchise Agreement, the Cable Communications Act, or other applicable law. An Application includes an Applicant's initial proposal, submission or request, as well as any and all subsequent written amendments or supplements to the proposal and relevant correspondence.

(e) "Basic Cable Service" or "Basic Service" means any service tier which includes the retransmission of local television broadcast signals, and public, educational, or governmental Access Channels.

(f) "Communications Act" means the Communications Act of 1934, and amendments thereto including, but not limited to Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, and the Telecommunications Act of 1996 as those Acts may hereinafter be amended.

(g) "Cable Service" means (a) the one-way transmission to Subscribers of (i) video programming service; or (ii) other programming service, and (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, or as otherwise permitted under applicable federal and state law.

(h) "Cable System," "Cable Television System," or "System," means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple Subscribers within the City. Such term does not include (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public rights-of-way; (iii) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on demand service; (iv) an open video system that complies with Section 653 of the Telecommunications Act of 1996; and (v) any facilities of any electric utility used solely for operating as an electric utility system. The foregoing definition of "Cable System" shall not be deemed to circumscribe the valid authority of the City to regulate the activities of any other communications system or provider of communications services or facilities as permitted by applicable federal or state law.

(i) "City" means the City of Delray Beach, Florida, a municipal corporation of the State of Florida, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(j) "Control of a Franchisee or Applicant" means possession of the ability to direct or cause the direction of the management or policies of a Franchisee or Applicant, or the operation of a Franchisee's Cable System, either directly or indirectly, whether through ownership of voting securities, by contract or understanding, or in any other manner.

(k) "Fair Market Value" means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the Franchise itself.

(l) "FCC" means the Federal Communications Commission or any successor governmental entity thereto.

(m) "Franchise" means the non-exclusive right granted by the City to a Franchisee in a Franchise Agreement to construct, maintain and operate a Cable System to provide Cable Services under, on, and over Streets, roads and any other public ways, rights-of-ways, or easements within all or specified areas of the City. The term does not include any license or permit that may be required by this Ordinance or other laws, ordinances or regulations of the City for the privilege of transacting and carrying on a business within the City or for disturbing or carrying out any work on any Street.

(n) "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth the terms and conditions under which the Franchise will be exercised.

(o) "Franchise Area" means the entire area within the legal boundaries of the City and such other areas as may hereinafter be annexed or incorporated by the City or, alternatively, that area designated in a Franchise Agreement.

(p) "Franchisee" means any person granted a Franchise pursuant to this Ordinance who has entered into a Franchise Agreement with the City.

(q) "Gross Revenues". As of the effective date of this Ordinance, the provisions of this definition are preempted pursuant to the Communications Service Tax Ch. 202, Florida Statutes and will remain preempted until such time as applicable law changes. Should applicable law change so as to allow the City to calculate Franchise fees as a percentage of Gross Revenues, Gross Revenues shall mean, unless prohibited by applicable federal or state law, or as otherwise provided in a Franchise Agreement, all revenues recognized according to generally accepted accounting principles (GAAP) generated by the Franchisee from the operation of the Cable System to provide Cable Services in the City. Notwithstanding anything to the contrary contained in this subsection, Gross Revenues include, but are not limited to, fees charged Subscribers for Basic Service; fees charged Subscribers for any optional, premium, per-channel or per-program service; fees charged Subscribers for any tier of service other than Basic Service; installation, disconnection, reconnection and change-in-service fees; late fees; leased access fees; and shall include the following services to the extent such services are considered Title VI services according to applicable law: revenue from Cable Service converters, Cable Service remotes, or any other Cable Service equipment rentals; revenues from cable guides; revenues from leases of the Cable System; advertising revenues allocable to the City based on a percentage of Subscribers in the City divided by the Subscribers in the Cable System (such percentage shall then be multiplied by the total advertising revenue of the cable system to determine the allocable Gross Revenue stemming from advertising); and revenues from home shopping channels or other sources allocable to the City, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to



common zip codes, the Franchisee shall allocate the percentage of revenue to the City that is equivalent to the percentage of the Subscribers of the City divided by the total Subscribers for the allocable franchises within the zip code. Unless prohibited by applicable law, Gross Revenues shall be the basis for computing the Franchise fee imposed pursuant to Section 93.17 hereof. Gross Revenues shall not include revenues received from programmers and used by Franchisee to market, promote or advertise a programming service; any revenue received by Franchisee for payment in connection with PEG Access or facilities as required by Section 93.16 hereof; any taxes or fees on services furnished by the Franchisee that are imposed upon any Subscriber or user by the state, Palm Beach County, City or other governmental unit and collected by the Franchisee on behalf of such governmental unit and that the Franchisee passes on in full to the applicable authority. However, it is hereby expressly provided that Franchise fees shall be included in the calculation of Gross Revenues. Further, Franchise fees shall not be paid on Subscriber deposits unless and until such deposits are applied to a customer account for services rendered.

(r) "Institutional Network" means a communications system constructed, or operated by the Franchisee for the City, the transmissions on which are generally available only to, and intended to be sent and received by, persons other than residential cable Subscribers generally.

(s) "Interconnection" means the electronic connection of two or more cable systems for the purpose of sharing Access Channel programming.

(t) "Law" means all duly enacted and applicable federal, state, County and City laws, ordinances, codes, rules, regulations and orders.

(u) "Leased Access Channel" means a channel designated in accordance with Section 612 of the Communications Act, 47 U.S.C., § 532, for commercial use by persons unaffiliated with the Franchisee.

(v) "Overbuild" means a Cable System constructed to serve Subscribers in an area of the City actually served by an existing franchised Cable System.

(w) "Person" means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the City.

(x) "Service Tier" means a category of Cable Service provided by a Franchisee and for which a separate charge is made by the Franchisee.

(y) "State of the Art" shall mean that level of technical performance, equipment, components and cable services (without reference to the content of the cable service) which has

been developed and demonstrated to be generally accepted and used in the cable industry, excluding "tests" involving new products offered for one year or less. Nothing herein shall be construed to require a Franchisee to employ any specific transmission technology or to carry any particular programming services.

(z) "Street or Streets" means the surface, the air space above the surface and the area below the surface of any public Street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the City holds any kind of property interest or over which the City exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a Cable System.

(aa) "Subscriber" means any person who lawfully receives Cable Service delivered over the Cable System. Any person who lawfully receives Cable Service but is not billed on an individual basis shall not be considered a Subscriber for the purpose of rate notification.

(bb) "Subscriber Base" means the total number of residential and commercial Subscribers within the City. For purposes of calculating Subscribers under bulk contracts, the Franchisee shall count each individual unit served as one Subscriber. Franchisee may use any lawful and reasonable equivalency measures provided it uses such measures uniformly for all franchise areas served by the Cable System, or as provided for in a Franchise Agreement.

(cc) "System Malfunction" means any Cable System equipment, facility or signal failure or malfunction that results in the loss of satisfactory service on one or more channels to one or more Subscribers. A malfunction is major if it affects two hundred (200) or more Subscribers.

(dd) "Transfer of a Franchise" means any transaction in which (1) any ownership or other interest in a Franchisee or its Cable System is transferred from one person or group of people to another person or group of people so that control of a Franchisee or control of Franchisee's Cable System is transferred; or (2) the rights and/or obligations held by a Franchisee under a Franchise Agreement are transferred or assigned to another person, group of people or entity. A transfer shall be considered "pro forma" only when it involves a transfer to a person, group of people or business entity that is a wholly owned or controlled affiliate or subsidiary of the Franchisee or Franchisee's parent entity and shall not result in a change in the ultimate parental control or ownership of the Franchisee.

(ee) "Two-Way Capability" means the incorporation into a Cable System of all appropriate design and engineering characteristics and features so that two-way transmission,

including, but not limited to, addressability, over the Cable System can be implemented and activated.

(ff) "Video Channel or Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel, including the associated audio signal, as television channel is defined by the FCC by regulation or otherwise.

**Section 93.03. Intent and Purposes.**

(a) It is the intent of the City and the purpose of this Ordinance to promote the public health, safety, and general welfare by providing for the grant of one or more Franchises for the construction and operation of a Cable System within the City; to provide for the regulation, to the extent provided for by law, of each Cable System within the City in the public interest; to provide for the payment of fees and other valuable consideration by a Franchisee to the City for the use of Streets by its Cable System; to promote the widespread availability of quality Cable Service to City residents and businesses, the City, and other public institutions; to encourage the development of cable and other communications technology and Cable Systems as a means of communication between and among members of the public, City businesses, the City, and other public institutions; to promote competitive cable rates and Cable Services; to promote the safe and efficient use of City Streets; to enhance and maximize the communicative potential of Streets used by Cable Systems; and to encourage the provision of a diversity of information sources to City residents, businesses, the community, the City, and other public institutions by cable technology.

(b) Recognizing the continuing development of communications technology and uses, it is the policy of the City to encourage experimentation and innovation in the development of Cable System uses, services, programming and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws.

**Section 93.04. Grant of Authority, Franchise Required.**

(a) The City may grant one or more Franchises in accordance with this Ordinance.

(b) No Person may construct or operate a Cable System over, on, or under public Streets in the City without a Franchise granted by the City, and no Person may be granted a Cable Television Franchise without having entered into a Franchise Agreement with the City pursuant to this Ordinance.

(c) Unless otherwise authorized by applicable law, any Franchise granted pursuant to this Ordinance is solely for the provision of Cable Service. Nothing herein shall (i) have the effect of authorizing, prohibiting or conditioning a Franchisee's provision of other services as may be permitted by applicable federal or state law; or (ii) waive any right of the City, if any, to require a Franchisee to obtain other authorizations, licenses, permits or registrations as the City may require under applicable federal or state law.

### **Section 93.05. Franchise Characteristics.**

(a) A Franchise authorizes use of City Streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a Cable Television System within a specified area of the City, but does not expressly or implicitly authorize the Franchisee to provide service to, or install cables, wires, lines, underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Communications Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

(b) A Franchise is non-exclusive and will not expressly or implicitly preclude the issuance of other Franchises to operate Cable Systems within the City, or affect the City's right to authorize use of City Streets to other persons to operate Cable Systems or for other purposes as it determines appropriate.

(c) All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy of the Streets, and the City reserves the right to reasonably designate where a Franchisee's facilities are to be placed within the Streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights of way.

(d) No transfer, whether by sale, assignment or change of control of a Franchise shall occur without the prior consent of the City and unless application is made by the Franchisee, and City approval obtained, pursuant to Section 93.24 hereof and the Franchise Agreement.

(e) A Franchise granted to an Applicant pursuant to this Ordinance to construct, operate and maintain a Cable System within the City, shall be deemed to constitute both a right and an obligation on the part of the Franchisee to provide the services and facilities of a Cable System as required by the provisions of this Ordinance and the Franchise Agreement. The Franchise Agreement shall constitute all of the terms and conditions of the Franchise that are finally negotiated and agreed upon by the City and Franchisee.

(f) Notwithstanding anything to the contrary, in the event that Franchisee, its parent, Affiliate or subsidiary elects to offer to Subscribers video programming services through any

means or method not included within the definition of a Cable System, including, but not limited to, all "open video systems", Franchisee shall remain subject to all terms and conditions of the Cable Television Franchise granted pursuant to this Ordinance.

**Section 93.06. Franchisee Subject to Other Laws; Police Power; No Waiver.**

(a) A Franchisee shall at all times be subject to and shall comply with all applicable federal, state and City laws. A Franchisee shall at all times be subject to all lawful exercise of the police power of the City, the eminent domain power of the City and any other powers granted the City by the Constitution of the State of Florida.

(b) Subject to applicable law, except as may be specifically provided in this Ordinance or under the terms of a Franchise Agreement, the failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Ordinance or a Franchise Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

**Section 93.07. Interpretation of Franchise Terms.**

(a) The provisions of this Ordinance shall apply to all cable Franchises.

(b) The provisions of this Ordinance shall, throughout the term of a Franchise, apply to a Franchise Agreement as if fully set forth in the Franchise Agreement, and the express terms of this Ordinance shall prevail over conflicting or inconsistent provisions in a Franchise Agreement unless such Franchise Agreement expressly provides otherwise.

(c) Except as to matters which are governed by federal law or regulation, a Franchise Agreement will be governed by and construed in accordance with the laws of the State of Florida.

**Section 93.08. Applications for Grant, Renewal, Modification or Transfer of Franchises.**

(a) A written Application shall be filed with the City for (i) grant of an initial Franchise; (ii) renewal of a Franchise in accordance with Section 626 (a-g) of the Communications Act, 47 U.S.C., § 546; (iii) modification of a Franchise Agreement; (iv) transfer of a Franchise; or (v) any other relief from the City pursuant to this Ordinance or a Franchise Agreement.



(b) Unless prohibited by applicable law, to be acceptable for filing, a signed original of the Application shall be submitted together with five (5) copies, and shall be accompanied by the required Application filing fee as set forth in Subsection 93.08(i) hereof, conform to any applicable request for proposals, and contain all reasonably required information. All Applications shall include the names and addresses of persons authorized to act on behalf of the Applicant with respect to the Application. The City Manager may waive submission of certain information required herein upon request of the Applicant for good cause shown.

(c) All Applications accepted for filing shall be made available by the City for public inspection. Where said Application contains information designated in writing by the Applicant as proprietary, the City shall not make such information available to the public to the extent it is permitted to keep the information confidential pursuant to applicable law.

(d) An Application for the grant of a new Franchise may be filed pursuant to a request for proposals issued by the City on an unsolicited basis. The City, upon receipt of an unsolicited Application, may issue a request for proposals. If the City elects to issue a request for proposals upon receipt of an unsolicited Application, the Applicant may submit an amended Application in response to the request for proposals, or may inform the City that its unsolicited Application should be considered in response to the request for proposals, or may withdraw its unsolicited Application. An Application which does not conform to the requirements of a request for proposals may be considered non-responsive and denied on that basis.

(e) An Application for the grant of an initial Franchise, a transfer or change of control or a renewal shall contain, at minimum, the following information unless expressly waived in part by the City or as otherwise provided in a Franchise Agreement:

(1) Name and address of the Applicant and identification of the ownership and control of the Applicant, including: the names and addresses of all Persons with ten percent (10 %) or more ownership interest in the Applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the Applicant; the names and addresses of all officers and directors of the Applicant; and any other Cable System ownership interest in excess of ten percent (10%) of each named Person (other than the officers and directors of the Applicant); provided that for an Application for a renewal of a Franchise, the information regarding Cable System ownership shall be provided upon written request of the City.

(2) An indication of whether the Applicant, or any Person controlling the Applicant, or any officer, director or Person with five percent (5%) or more ownership interest in the Applicant, has been adjudged bankrupt, had a cable or telecommunications Franchise or license revoked, or been found by any court or administrative agency to have violated a security

or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such Person and a full explanation of the circumstances;

(3) A demonstration of the Applicant's technical, legal and financial ability to construct and/or operate the proposed Cable System, including identification of key personnel to the extent known;

(4) For an Application for an initial Franchise, or when requested in the case of a transfer or a renewal, a statement prepared by an independent certified public accountant regarding the Applicant's financial ability to complete the construction and operation of the Cable System proposed;

(5) A description of the Applicant's prior experience in Cable System ownership, construction and operation, and identification of communities in Florida (or if Applicant does not own any systems in Florida, identification of the twenty (20) largest franchise areas served by Applicant or its Affiliates) which the Applicant or any Person controlling the Applicant or having more than a five percent (5%) ownership interest in Applicant has, or has had, a cable Franchise or license or any interest therein;

(6) Identification of the area of the City to be served by the proposed Cable System, including a description of the service area's boundaries;

(7) A description of the services and physical facilities proposed, or in the case of a transfer or renewal, any changes to the current physical facilities, including channel capacity, performance characteristics, headend, and access facilities; upon request, the Applicant shall make information on technical design available for inspection;

(8) Where applicable, a description of the construction of the proposed Cable System, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

(9) If Applicant is currently operating a Cable System within the City, a description of the existing Cable System and capacity and the operator's plans to upgrade the Cable System, if any;

(10) If Applicant or Applicant's parent, or any subsidiary or Affiliate of Applicant is currently operating a SMATV System within the City, a list of all such locations;

(11) For an initial grant or in the case of a renewal or transfer and upon written request of the City for informational purposes, the proposed rate structure, including projected charges for each Service Tier, installation, converters, and other equipment or services, and the Applicant's ownership interest in any proposed Cable Services to be delivered over the Cable System;

(12) An Application for a renewal shall also include a demonstration of how the Applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the City;

(13) Upon written request of the City and for information purposes only, a description of any non-cable telecommunications services offered or proposed to be offered by the Applicant or its parent, Affiliate or subsidiary in Palm Beach County.

(14) Pro forma financial projections for the first five (5) years of the Franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules. In the case of a transfer, such pro forma financial plan shall be provided if the transferee or its parent is not a publicly traded company.

(15) If an Applicant for an initial Franchise proposes to provide Cable Service to an area already served by an existing cable Franchisee, the identification of the area where the overbuild would occur, the potential Subscriber density in the area which would encompass the overbuild, and the ability of the Streets to accommodate an additional System;

(16) Upon written request of the City, any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance and information that the City may reasonably request of the Applicant in a timely manner that is relevant to the City's consideration of the Application; and

(17) An Affidavit or declaration of the Applicant or authorized officer certifying the truth and accuracy of the information in the Application, acknowledging the enforceability of Application commitments, and certifying that the proposal meets all federal and state law requirements.

(f) An Application for modification of a Franchise Agreement shall include, at minimum, the following information:

(1) The specific modification requested;

(2) The justification for the requested modification, including the financial impact of the requested modification on Subscribers and others, and the financial impact on the Applicant if the modification is approved or disapproved;

(3) A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C., § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;

(4) Any other information necessary for the City to make an informed determination on the Application for modification; and

(5) An Affidavit or declaration of the Applicant or authorized officer certifying the truth and accuracy of the information in the Application, and certifying that the Application is consistent with all federal and state law requirements.

(g) An Application for renewal of a Franchise shall comply with the requirements of Section 93.23 hereof.

(h) An Application for approval of a transfer of a Franchise shall comply with the requirements of Section 93.24 hereof.

(i) Unless prohibited by applicable law, to be acceptable for filing, an Application shall be accompanied by a filing fee in the following amount, as appropriate:

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|---|----------|
| (1) For a new or initial Franchise:   | \$25,000 |
| (2) For renewal of a Franchise:   | \$20,000 |
| (3) For a transfer of a Franchise<br>(other than a pro forma transfer):       | \$ 5,000 |
| (4) For a pro forma transfer of a Franchise                                   | \$ 1,000 |
| (5) For modification of a Franchise Agreement<br>pursuant to 47 U.S.C. § 545: | \$ 1,000 |
| (6) For any other relief:   | \$ 500   |

The purpose of the filing fee is to defray a portion of the City's cost in processing an Application. The filing fee is therefore intended to be a charge incidental to the awarding or enforcing of a Franchise within the meaning of Section 622(g)(2)(D) of the Communications

Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the Franchise fee imposed in a Franchise Agreement or credited against any tax, including, but not limited to, the Florida Communications Service Tax (Ch. 202.FLStat) or any substitute tax or fee, unless required by applicable law.

**Section 93.09                      Grant of Franchises.**

(a)     The City may grant a cable Franchise for a period not to exceed fifteen (15) years plus such extensions as may be approved by the City to serve the City.

(b)     In evaluating an application for a Franchise, the City may, if applicable, and if required by applicable federal or state law, shall consider, among other things, the following factors: the Applicant's technical, financial, and legal qualifications to construct and operate the proposed System; the adequacy of the proposed construction arrangements, facilities, equipment, and services based on the public convenience, safety and welfare; the Applicant's experience in constructing and operating cable systems and providing Cable Service in other communities. In the case of an initial grant, the City shall also consider the economic impact upon private property within the Franchise Area; the public need for such Franchise, if any; the capacity of public rights-of-way to accommodate the Cable System; the present and future use of the public rights-of-way to be used by the Cable System; the potential disruption to existing users of the public rights-of-way to be used by the Cable System and the resultant inconvenience which may occur to the public; the financial ability of the Franchise Applicant to perform; and whether the proposal will meet reasonably anticipated community needs and serve the public interest. Evaluation by the City shall not be based on the content of the programming the Applicant proposes to provide.

(c)     The City shall hold a public hearing to consider an Application or Applications, the Applicant(s) shall be given at least ten (10) days prior notice of the hearing and shall be given an opportunity to be heard. Based upon the Application(s), the testimony presented at the public hearing, any recommendations of the City Manager or staff, and any other information relevant to the Application(s), the City shall decide by resolution whether to grant or deny a Franchise Application.

(d)     As a condition precedent to the grant of a Franchise, the Applicant shall file an acceptance of the Franchise accompanied by any and all bonds, certificates of insurance or other obligations as required in a Franchise Agreement no later than the date of the City Commission's consideration of the grant or denial of the application. This period may be extended for good cause by the City. If the acceptance is not filed with the City by the above-referenced date, or if the period is not extended by the City, the Commission may delay consideration of the Application or deny the Application. The City may, at its option, grant the Applicant a short-term extension(s). The grant of such a short term extension(s) will not confer on the Applicant



the right to an automatic acceptance, transfer, modification or renewal. In the case of a transfer, the City shall grant an extension to this requirement as long as the Franchisee keeps such insurance, bonds or other surety in place until thirty (30) days after the transaction related to the transfer closes and the transferee has provided its insurance, bonds or other surety in place within thirty (30) days following such closing.

(e) Unless prohibited by applicable law, Applications for the grant of an initial Franchise, a Franchise renewal, a Franchise Agreement modification, or a Franchise transfer may be subject to a processing fee in addition to the filing fee in an amount not to exceed the reasonable and justifiable out-of-pocket costs to the extent that the filing fee does not cover the costs incurred by the City in considering the Application, including consulting and legal costs. Prior to the date of the resolution approving or denying the Franchise Agreement or modification or transfer thereof by the City Commission, the City shall notify the Franchisee of the estimated amount of any processing fee and its method of calculation.

This processing fee is therefore intended to be a charge incidental to the awarding or enforcing of a Franchise within the meaning of Section 622(g)(2)(D) of the Communications Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the Franchise fee imposed in a Franchise Agreement or any federal or state tax and shall not be passed through to Subscribers as a separate line item unless required by applicable law.

#### **Section 93.10                      Commencement of Service.**

Any Franchisee commencing initial construction of a Cable Television System after the effective date of this Ordinance shall commence construction within one year of the effective date of the Franchise Agreement and shall complete construction so as to offer service to all dwellings within the Franchise Area in compliance with the requirements of a Franchise Agreement, but in no event later than two (2) years from the effective date of the Franchise Agreement unless an extension is granted by the City for good cause shown.

#### **Section 93.11                      Insurance; Surety; Indemnification.**

(a) A Franchisee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire term of the Franchise including any renewals thereof, the following liability insurance coverage insuring the City to the extent applicable and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Florida law and commercial general liability insurance with contractual coverage with respect to the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's business in the City, in the minimum amounts of \$1,000,000 per occurrence, for bodily injury or death, broad form property damage liability, and insurance to cover infringement of copyrights.

(b) All insurance policies shall be with insurance companies authorized to do business in the State of Florida and such companies shall have a minimum Best's rating of A-1, or an equivalent rating. The City may require coverage and amounts in excess of the above minimums where necessary to reflect changing liability exposure and limits or where required by law.

(c) A Franchisee shall keep on file with the City certificates of insurance evidencing the above insurance coverage and evidencing that the City, its officers, boards, commission, commissioners, agents and employees are listed as additional insureds on the general liability policy. If a claim is filed such that the City claims insurance coverage, Franchisee shall immediately respond to all reasonable requests by the City for information with respect to the scope of the insurance coverage.

(d) All general liability insurance policies shall provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City. A Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance satisfactory to the City which complies with this Ordinance.

(e) A Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses arising out of the willful or negligent acts or omissions of the Franchisee or its officers, agents, employees or contractors relating to construction, maintenance or operation of its Cable System, and the conduct of Franchisee's business in the City; provided, however, that Franchisee's obligation hereunder shall not extend to any claims caused by the willful misconduct or negligence of the City, its officials, boards, commissioners, agents or employees, or to claims arising from Franchisee's provision of Access Channels for public, educational and/or governmental use pursuant to a Franchise granted hereunder, to the extent such claims relate to programming and content on such channels, over which Franchisee has no editorial control nor exercises administrative control. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings, and claims arising out of copyright infringement or a failure by the Franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the Cable System, claims arising out of Section 638 of the Communications Act, 47 U.S.C. 558, and claims against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any Person, firm or corporation. If any such claim arises, the Franchisee shall have the obligation and duty to defend the City and any other indemnified party hereunder; provided, however, Franchisee may not agree to any

settlement of claims affecting the City without the City Attorney's approval. If the City Attorney finds that separate representation to fully protect the interests of the City is necessary, Franchisee shall consult with the City Attorney on counsel that is acceptable to the City Attorney. If Franchisee is unwilling or unable to select counsel acceptable to the City Attorney, whose acceptance shall only be withheld for good cause shown, Franchisee shall pay all actual and reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding subject to this indemnification. The City's expenses shall include all out of pocket expenses, attorney's fees and costs of the City attorney or assistants, or any City employees, outside attorneys or other agents. Notwithstanding the foregoing, Franchisee shall not be required to indemnify the City pursuant to this Ordinance or a Franchise Agreement for actions relating to public, government and education access programming decisions outside of Franchisee's control or for the City's use of the Cable System or the use of public, government and education Access Channels, facilities or funding.

#### **Section 93.12. Security Fund.**

(a) The franchisee at its sole expense shall post and keep posted with the City a cash security deposit or non-revocable letter of credit or a surety bond in a form and in an amount approved by the City to be used as a security fund to ensure the franchisee's faithful performance of and compliance with all terms and provisions of this Chapter, the franchise agreement and other applicable law, compliance with all orders, permits and directions of the City, the payment by the franchisee of any claims, liens, fees, or taxes due the City which arise by reason of the construction, operation or maintenance of the system, and to indemnify the City against all losses that it may suffer in the event the franchisee fails to comply with any term or provision of this Chapter, the franchise agreement or other applicable law. The security fund shall remain in effect for the full term of the Franchise plus, at minimum, an additional six (6) months thereafter. The exact form and amount of the security fund as set forth in a franchise agreement shall be an amount necessary to protect the public, to provide adequate incentive to the franchisee to comply with this Chapter and the franchise agreement, and to enable the City to effectively enforce compliance therewith. The franchise agreement shall provide for the procedures to be followed with respect to the security fund.

(b) The Franchisee and its surety shall be jointly and severally liable.

(c) The form and conditions of the bonds and the surety shall be acceptable and satisfactory to the City and surety shall be a nationally recognized surety company acceptable to the City, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, all bonds shall be placed with sureties with a Best Rating of no less than A-VII. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm

Beach, Dade, Broward or Martin Counties, Florida, representing such corporate sureties. If the franchisee is a partnership, the bond should be signed by each of the individuals who are partners; if a corporation, the bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the franchise.

(d) If the surety on any bond furnished by franchisee is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of paragraph B, franchisee shall within ten (10) days thereafter substitute another bond, surety or cash deposit which must be in conformance with paragraph (c).

(e) The security fund shall be maintained at the amount specified in a franchise agreement, even if amounts have to be withdrawn and replenished pursuant to subsection (g).

(f) Following a determination by the City, pursuant to Section 93.25 that the Franchisee has failed to comply with any provision of the franchise agreement which the City reasonably determines can be remedied by demand on the security fund, the City may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the City shall notify the franchisee of the amount and the date thereof.

(g) Within thirty (30) days after notice to it that any amount has been withdrawn from the security fund deposited pursuant to subsection A above, the franchisee shall pay to, or deposit with, the City a sum sufficient to restore such security fund to the amounts specified in subsection A, whatever the case may be. Failure to replenish the security fund shall subject the franchisee to penalties. However, replenishment is without prejudice to the franchisee's right under Section 93.25 to contest the validity of the City's withdrawal of money from the security fund.

(h) The rights reserved to the City with respect to the security fund posted pursuant to this Section are in addition to all other rights and remedies the City may have under this Chapter, the franchise agreement, or at law or equity, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right or remedy of the City.

(i) The portion of the security fund deposited pursuant to this Section necessary to compensate the City for damages and costs sustained shall become the property of the City in the event that the franchise is canceled or terminated by reason of the default of the franchisee. The franchisee, however, shall be entitled to the return of such security fund, or portion thereof less any amount in dispute, without interest, as remains on deposit with the City six (6) months after the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the franchisee.

**Section 93.13. Construction Bond.**

(a) A franchise agreement shall provide that, prior to any cable system construction, upgrade, rebuild or other significant work in the public rights-of-way, a franchisee shall establish in the City's favor a construction bond in an amount specified in the franchise agreement or other authorization as determined by the City to ensure the franchisee's faithful performance of construction of the cable system, upgrade, rebuild or other work in the public rights-of-way.

(b) The form and conditions of the bonds and the surety shall be acceptable and satisfactory to the City and surety shall be a nationally recognized surety company acceptable to the City, listed on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, all bonds shall be placed with sureties with a Best Rating of no less than A-VII. Bonds shall be executed and issued by a resident agent, licensed and having an office in Palm Beach, Dade, Broward or Martin Counties, Florida, representing such corporate sureties. If the franchisee is a partnership, the bond should be signed by each of the individuals who are partners; if a corporation, the bond should be signed in the correct corporate name by duly authorized officer, agent or attorney-in-fact. There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts in the franchise.

(c) If the surety on any bond furnished by franchisee is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of paragraph B, franchisee shall within ten (10) days thereafter substitute another bond, surety, or cash deposit which must be in conformance with paragraph (b).

(d) In the event a franchisee subject to such a construction bond fails to complete the cable system construction, upgrade, rebuild or other work in the public rights-of-way in a safe, timely and competent manner in accordance with the provisions of the franchise agreement, then there shall be recoverable jointly and severally from the principal or surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the franchisee, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund pursuant to Section 93.13 where such amount exceeds that available under the security fund.

(e) The franchise agreement may specify that sixty (60) days after completion of the cable system construction, upgrade, rebuild or other work in the public rights-of-way and payment of all construction obligations of the cable system, the franchisee may eliminate the bond or reduce its amount unless the City has made a demand against the deposit or notified



franchisee of a potential claim and requested maintenance of the security. However, the City may subsequently require the reestablishment of or an increase in the bond amount for any subsequent construction, upgrade, rebuild or other work in the public rights-of-way.

(f) The construction bond shall be subject to the approval of the City's Risk Manager and the City Attorney, and shall provide that:

"This bond may not be canceled, or allowed to lapse, until ninety (90) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(g) The rights reserved by the City with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the City may have under this Chapter, the franchise agreement, or at law or equity, and no action, proceeding or exercise of a right with respect to such bond shall effect any other right or remedy of the City.

#### **Section 93.14. Minimum Facilities and Services.**

(a) The following minimum requirements for facilities and services apply to all Franchises granted by the City. The City may require in a Franchise Agreement that a Franchisee exceed these minimum requirements where it determines, under circumstances existing at the time of the application, that the additional requirements are necessary to meet the City's future cable-related needs and interests or to serve the public interest.

(1) Any Cable System constructed, upgraded, reconstructed, or rebuilt after the effective date of this Ordinance shall have a minimum capacity of 750 MHz or the equivalent thereof available for immediate or potential use. A Franchise Agreement may provide for a larger minimum capacity requirement.

(2) The City shall require in a Franchise Agreement that a Franchisee provide Access Channels, facilities and other support for public, educational and/or governmental use, which may include, but not be limited to, provision of an Institutional Network.

(3) The City may require any Cable System operating pursuant to a Franchise to cablecast City Commission meetings live to all Subscribers.

(4) A Cable System shall provide leased access channels as required by federal law.

(5) Unless otherwise provided in a Franchise Agreement, a Franchisee shall provide no less than one service outlet per location and one on-line access connection to all City

buildings (regardless of whether such facilities are owned or leased by the City) and all public schools within its Franchise Area not already served by another franchised cable operator at no cost to the City or school involved, and shall charge not more than its time and material costs for any additional service outlets or equipment provided to such facilities.

(6) A Franchisee shall design its Cable System to allow the City to interrupt Cable Service in an emergency to deliver necessary information to Subscribers subject to federal, state and County priority. Franchisee shall, at minimum, meet all FCC requirements for emergency alert systems.

(7) A Franchisee shall transmit all imbedded signals, including closed circuit captioning information for the hearing impaired and audio signals for the visually impaired.

(8) Standard installation shall consist of a drop, not exceeding one hundred twenty-five (125) feet from the cable plant to the nearest entry point of a Subscriber's residence. Residential drops in excess of one hundred twenty-five (125) feet may be charged according to the Franchisee's rate schedule.

(b) Except for Cable Systems in operation on the effective date hereof pursuant to Franchises initially granted or renewed in areas annexed by the City subsequent to said initial grant or renewal, a Franchise Agreement shall require that a Franchisee make Cable Service available to every dwelling within the City of Delray Beach or as otherwise provided in a Franchise Agreement. If the City annexes any new areas after the date of this Ordinance, Franchisee shall be required to provide Cable Service at standard installation rates to such areas subject to this Ordinance and any Franchise granted hereto. Notwithstanding anything to the contrary, a Franchisee shall not be required to provide Cable Service to any area already served by a franchised cable operator.

(c) In the event a Franchisee lawfully operating in a Franchise Area that is less than the entire City desires to provide service to an area of the City already being served by a franchised cable operator, then the Franchisee wishing to expand service shall agree to construct and operate its Cable System on terms no more favorable and no less burdensome than those pursuant to which the existing operator is subject.

(d) A Franchisee shall interconnect its PEG Access Channels with the PEG Access Channels of any adjacent cable systems owned by or affiliated with Franchisee if such interconnection is technically and economically feasible. Upon the written request of the City and as required in a Franchise Agreement, Franchisee shall interconnect its PEG Access Channels to any or all other Cable Systems operating within the City for the purpose of transmitting PEG programming if (i) such interconnection is technically feasible, (ii) the other operator(s) of such Cable Systems operating within the City pays for the cost of the

interconnection and (iii) such other operator(s) provide funding for PEG access equivalent to the amount provided by Franchisee.

(e) A Franchisee shall locate each government Access Channel on the same channel number throughout the City.

(f) In an initial or renewal franchise granted pursuant to this Ordinance, a Franchisee shall agree to maintain that level of technology to its Cable System to satisfy the State-of-the-Art requirement, as defined in Section 93.02(y) herein subject to qualifications, conditions, and terms that may be expressly identified in a Franchise Agreement.

(g) Pursuant to the procedures set forth in Section 93.25, failure to comply with any part of this Section 93.14 may result in the imposition of liquidated damages in the amount of Two Hundred Fifty Dollars (\$250) per day per violation or as otherwise provided in a Franchise Agreement.

#### **Section 93.15. Technical Standards.**

(a) Any Cable System within the City shall meet or exceed the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted. Antennas, supporting structures, and outside plant used in the Cable System shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, County, City and/or utility laws, ordinances, rules and regulations.

(b) All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, and all local codes, laws and accepted industry practices, and as hereinafter may be amended or changed.

(c) At the times required by FCC rules, the Franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this Ordinance, the Franchise Agreement, and FCC requirements. Upon request, the Franchisee shall provide the proof of performance test results promptly to the City. The City shall have the right to inspect the Cable System facilities during and after their construction to ensure compliance with the requirements of the Franchise Agreement, this Ordinance, and FCC standards. A Franchisee has the right to be present at all such inspections.

(d) The City may require an annual proof of performance test, or other tests as specified in a Franchise Agreement or applicable law or regulation, to be performed promptly upon request and at the expense of the Franchisee. The Franchisee shall provide the test results to the City within thirty (30) days of completion.

(e) A Franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the Cable System of another Franchisee, or individual or master antennas used for receiving television or other broadcast signals.

**Section 93.16. Access Channels and Facilities.**

(a) It is the purpose and intent of the City to require that all Franchisees provide Access Channels, facilities, equipment and support sufficient to meet the needs and interests of the community in light of the costs thereof with respect to public, education and government activities as set forth in this Section 93.16.

(b) A Franchisee granted a Franchise pursuant to this Ordinance shall provide to the City, a grant for PEG capital support, as set forth in a Franchise Agreement.

(c) A Franchisee shall provide a minimum of one Access Channel and facilities dedicated to the exclusive use of the City and such other capital support for public, educational and/or governmental use as required in a Franchise Agreement. A Franchisee shall provide at minimum one return line for each Access Channel then used by the City to the headend, as technically necessary for the operation of Access Channels referred to herein or as otherwise required by a Franchise Agreement. The City may increase the number of PEG Access Channels to a number not to exceed three, so long as a threshold use requirement is met for each Channel beyond the first the City then utilizes. In order to request a second PEG Access Channel, the existing PEG Access Channel must be programmed at least six hours per day with non-repetitive, locally produced programming, Monday through Friday, for a minimum of six consecutive weeks. Character-generated programming shall not be included for purposes of calculating the programming requirement. Once the threshold is met and a second Access Channel given, the first Access Channel must maintain the threshold requirement. After attaining the threshold requirement, if the first Access Channel fails to meet the threshold for four consecutive months, the second Access Channel may be reclaimed by Franchisee upon sixty (60) days written notice. Under no circumstances shall the City lose the right to its first Access Channel.

(d) During the Franchise term, the Franchisee shall provide, as specified in a Franchise Agreement or otherwise agreed to, such equipment, facilities, technical and capital support as the City Commission may determine is useful for the production and cable casting of programming on the public, education and government channels.

(e) As may be required in a Franchise Agreement or otherwise agreed to, a Franchisee shall tape or cablecast live events held in the City as may be designated by the City.

(f) An Application for an initial grant, renewal or transfer of a Franchise may, or at the City's request shall, include proposals for the provision of an Institutional Network interconnecting City, educational institutions and/or other public facilities as designated by the City.

(g) An Application for an initial grant, renewal or transfer of a Franchise may, or at the City's request shall, subject to Section 93.14(d), include a proposal for the interconnection of Franchisee to any or all other Cable Systems operating within Palm Beach County for purposes of providing or sharing PEG Access Channels. Where applicable, an Applicant shall include in the Application a statement outlining the status of the interconnection of its Cable System to any and all Cable Systems operating within Palm Beach County.

(h) A Franchise Agreement may provide for additional capital grants in lieu of or in addition to some or all of the facilities, equipment, and services referenced in this Section.

(i) The facilities, equipment, monetary grant and all other support to be provided by a Franchisee and as set forth in a Franchise Agreement constitute capital costs that are required by the Franchise to be incurred by Franchisee for public, educational or government access facilities within the meaning of Section 622(g)(2)(C) of the Communications Act, 47 U.S.C. § 542(g)(2)(C), and such grant does not constitute a Franchise fee or tax within the meaning of the Communications Act, state law, City code or a Franchise Agreement. The City shall use the facilities, equipment, monetary grant and all other support to be provided by Franchisee hereunder in a manner consistent with Section 622(g)(2)(C) of the Communications Act.

#### **Section 93.17. Franchise Fee.**

(a) As of the effective date hereof, the State of Florida Communications Service Tax, (F.S., Ch. 202), prohibits the obligations imposed on a Franchisee in this section and this Section 93.17 is severable from this Ordinance and has no effect on the remaining valid portions of this Ordinance. However, if state or federal law allows the City to impose the requirements of this section, the City expressly reserves the right to do so.

(b) If permitted by applicable law, a Franchisee, as compensation for the privilege granted under a Franchise pursuant to this Ordinance for the use of the City's Streets to construct and operate a Cable System, shall pay to the City a Franchise fee in an amount up to a maximum of either (i) five percent (5%) of the Franchisee's Gross Revenues derived from the operation of its Cable System within the City during the term of its Franchise; or (ii) in the event the Communications Act or other applicable law is amended to permit the City to assess a Franchise fee of a greater amount than that specified in (i) above, the Franchisee agrees to pay to the City the new amount after a public hearing in which the public and Franchisee are given an



opportunity to comment on the impact of the higher fee. In no event shall a Franchisee pay a Franchise fee greater than the maximum permitted by applicable law.

(c) A Franchisee shall pay the Franchise fee due to the City on a quarterly basis. Payment for each month shall be made to the City not later than forty five (45) calendar days after the end of each calendar month.

(d) A Franchisee shall file with the City within sixty (60) days after the expiration of each calendar year or portion thereof during which its Franchise is in force, a financial statement setting forth the computation of Gross Revenues used to calculate the Franchise fee for the preceding year or portion thereof and a detailed explanation of the method of computation. The statement shall be certified by a duly authorized corporate officer. The Franchisee will bear the cost of the preparation of such financial statements.

(e) Subject to applicable law, any acceptance by the City of any Franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable.

(f) The Franchise fee payment is not a payment in lieu of any other tax, fee or assessment, subject to applicable law.

(g) If permitted by applicable law, the City, or its representative, may from time to time but not more than once in any twelve (12) month period, and upon reasonable notice, inspect, audit any and all books and records of the Franchisee relevant to the determination of Gross Revenues and the computation of Franchise fees due, and may re-compute any amounts determined to be payable under the Franchise. In the case of any Franchise granted, renewed, modified or transferred on or after the effective date hereof the cost of the audit will be borne by the Franchisee if, as a result of the audit, the City determines that the Franchisee has underpaid the Franchise fees owed in an amount equal to or exceeding two percent (2%) of the Franchise fees actually paid. A Franchisee shall make all books and records necessary to satisfactorily perform the audit readily available to the auditors in Palm Beach County for inspection and copying.

(h) In the event that a Franchise fee payment is not received by the City on or before the due date set forth in Subsection (c) above, any Franchisee granted an initial Franchise, renewal, modification or transfer on or after the date hereof shall pay a late charge of eighteen percent (18%) per annum of the amount of the unpaid Franchise fee payment; provided, however, that such rate does not exceed the maximum amount allowed under Florida law. Any interest and/or late charges paid by Franchisee is intended to be a charge incidental to the enforcing of a Franchise within the meaning of Section 622 (g)(2)(D) of the Communications

Act, 47 U.S.C. § 542(g)(2)(D), and may not be deducted from the Franchise fee imposed by this Ordinance or any Franchise Agreement.

(i) Unless prohibited by law, when a Franchise terminates for whatever reason, the Franchisee shall file with the City within ninety (90) calendar days of the date it ceases operations in the City, a financial statement, audited by an independent certified public accountant and certified by the Franchisee's chief or other duly authorized financial officer, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. Adjustments will be made at that time for Franchise fees due to the date that the Franchisee's operations ceased.

#### **Section 93.18. Reports and Records.**

(a) The Franchisee shall submit reports to the City quarterly according to the following schedule: January through March are due on or before April 25, April through June are due on or before July 25, July through September are due on or before October 25 and October through December are due on or before January 25 of each year or as otherwise provided in a Franchise Agreement.

The quarterly report shall include, but not be limited to:

(1) Number of homes passed, number of cable plant miles, number of new installs, number of disconnects and net result of new installs and disconnects.

(2) Telephone reports, broken down by quarter, indicating the number of calls received, number of calls abandoned, number of calls receiving a busy signal and percentage of total calls for which a busy signal was received.

(3) A summary by quarter for the number of standard installations performed within seven days, number of unplanned service interruptions, the hours in which planned service interruptions have occurred, number of unplanned service interruptions by duration, number of service interruptions responded to within 24 hours, number of other service problems responded to within 36 hours, preventative measures to reduce or eliminate service interruptions and any other information that may be reasonably required to monitor the Franchisee's compliance with this Ordinance. A Franchisee may comply with the requirements of this subsection by providing to the City a copy of the actual written complaint and/or service interruption logs maintained by Franchisee.

(4) Unless prohibited by applicable law, revenue information, including, but not limited to number of Subscribers for each type of Cable Service offered, and the Gross Revenue from all sources attributable to the operations of the Cable System by the Franchisee in

the City, stating separately by category each source and the amount of revenue attributable thereto. As of the date of this Ordinance, the obligations imposed on Franchisee in this section to provide an annual financial statement are prohibited by the State of Florida Simplified Communications Service Tax, F.S., Ch. 202, and this obligation is severable from this Ordinance and has no effect on the remaining valid provisions hereof. However, if state or federal law allows the City to impose the requirements of this section, the City expressly reserves the right to do so.

(b) Within six (6) months of the close of its fiscal year, the Franchisee shall provide an annual report to the City that includes the following information:

(1) A summary of the activities of the previous year in development of the Cable System, including as pertains to Cable Services, initiated or discontinued policy changes enacted during the previous year, number of cable Subscribers for each tier or type of Cable Service or Cable product (including gains and losses), homes passed and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including Cable System upgrades, during the year with any projections previously provided to the City, as well as rate and charge increases and/or decreases for the previous fiscal year.

(2) The web-site addresses to the Franchisee's ultimate parent annual report and 10-K as filed with the SEC, and all filings made with the State of Florida under the Communications Services Tax Simplification Law. Unless prohibited by applicable law, to verify Franchise fee payments, Franchisee shall provide, upon written request, an annual financial report to include a statement of sources of revenues for the Franchise Area. The statement shall be audited if Franchisee has audited statements prepared in its normal course of business. If not, the statements shall be certified by the chief financial officer of the Franchisee. The financial report shall include notes to the financial statements that specify all significant accounting policies and practices upon which it is based. As of the date of this Ordinance, the obligations imposed on Franchisee in this section to provide an annual financial statement are prohibited by the State of Florida Simplified Communications Service Tax, F.S., Ch. 202, and this obligation is severable from this Ordinance and has no effect on the remaining valid provisions hereof. However, if state or federal law allows the City to impose the requirements of this section, the City expressly reserves the right to do so.

(3) Where applicable, a copy of updated maps depicting the location of all trunk lines and feeder lines and associated devices in the City to the extent such locations have changed. Upon request of the City, such maps shall be provided in digitized form at the expense of the Franchisee.

(4) A summary of written subscriber or resident complaints, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent

Cable System problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the City, subject to Franchisee's obligation to maintain Subscriber privacy in accordance with federal law.

(5) Upon written request, and if not otherwise provided, a summary of the number of unplanned service interruptions, the hours in which planned service interruptions have occurred and the number of unplanned service interruptions by duration, including preventative measures to eliminate reoccurrence.

(6) Upon written request, if the Franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the Franchisee or parent corporation stock or ownership interests are publicly traded, a copy of its most recent annual report.

(7) Upon written request, if the Franchisee is a partnership, a list of the partners, including any limited partners, and addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner and the officers and directors of any parent corporation; and where the general partner or parent corporation ownership interests are publicly traded, a copy of its most recent annual report.

(8) Upon written request, a list of all people holding five percent (5%) or more ownership or otherwise cognizable interest in the Franchisee pursuant to the Communications Act and 47 C.F.R. 76.501.

(9) A copy of the rules and regulations of the Franchisee applicable to Subscribers of the Cable System.

(10) A report on the number of senior citizens, economically disadvantaged or disabled Subscribers receiving any rate discounts and the amount of any such discounts for specific Cable Services if Franchisee offers separate rates or discounts for those categories of Subscribers.

(11) A report on the number of multiple dwelling buildings and units therein receiving Cable Service under bulk agreements.

(12) A full schedule and description of services, service hours and location of the customer service office of the Franchisee or offices available to Subscribers, and a schedule of all rates, fees and charges for all Cable Services provided over the Cable System.

(13) Upon written request, a report on the number of total Subscribers served by the Franchisee in the Cable System, with a breakdown by the types of Cable Services received by Subscribers.

(14) Upon written request, a copy of any filing made to the FCC pursuant to Equal Employment Opportunity Council requirements.

(c) Upon each written request by the City made not more than once annually, a Franchisee shall within 45 days of receipt of the request, provide the following documents to the City, without regard to whether the documents are filed by the Franchisee or an Affiliate:

(1) If not otherwise available, annual financial report of the Franchisee or its parent or any Affiliate of Franchisee that controls Franchisee and issues an annual financial report.

(2) Copyright filings reflecting the operation of the Cable System.

(3) Any pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted within the previous twelve (12) months by or on behalf of the Franchisee to the FCC, SEC or any state or federal agency, court or regulatory council that may directly and adversely impact the operation of the Franchisee's Cable System in the City or that may adversely impact the rights or obligations of the City under this Ordinance or the Franchise Agreement and any and all responses, if any, to such filings.

(4) Any and all notices of deficiency, forfeiture or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the Cable System, Franchisee or any Affiliate of Franchisee, provided, however, that any such notice or documents relating to an Affiliate of the Franchisee need be provided only to the extent the same may directly and adversely affect or bear on operations of the Franchisee in the City. For example, a notice that an Affiliate that has a management contract for the Cable System located in the City was not in compliance with the FCC's EEO requirements would be deemed to affect or bear on operations in the City.

(d) The Franchisee shall, upon written request, furnish to the City such additional reports as a Franchisee may prepare as a customary business practice with respect to its operations of the Cable System, which in the City's discretion are reasonable and necessary for the administration and/or enforcement of this Ordinance.

(e) A Franchisee shall provide the City, within thirty (30) days of filing or receipt of any petition or filings with any federal, state, or local agencies or courts, which may, in the reasonable judgment of the Franchisee, adversely impact the construction, operation or

maintenance of Franchisee's Cable System, affect City and/or Subscribers regarding this Ordinance or a Franchise Agreement, including, but not limited to, any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy. In any administrative or legal proceeding in which Franchisee is a party, which in the reasonable judgment of Franchisee adversely impacts the construction or operation of its Cable System in the City, Franchisee shall provide a copy of any filed document that is available for public dissemination, upon written request of the City, within five (5) days. To the extent the City desires and may properly participate in the proceeding, Franchisee agrees that it will not oppose any necessary extension or tolling of time that may allow the City's participation in such matter. However, the Franchisee may oppose or object to any extension of time that exceeds the period of time used by Franchisee to provide a copy of the requested filing to the City.

(f) A Franchisee shall make a complete set of books and records available for inspection and audit by the City in Palm Beach County, for purposes of ascertaining compliance with this Ordinance and the Franchise Agreement, subject to Subsection (h) below. Such inspection and audit shall be upon reasonable notice and during normal business hours.

(g) Any materials requested by the City which are deemed proprietary and confidential by Franchisee shall be made available for review and inspection by the City at a location in Palm Beach County (but not copying or removal, unless otherwise required by federal or state law, including but not limited to the public records law of the State of Florida). The City shall accord all books and records that it inspects under this Section the degree of confidentiality such books and records are entitled to under federal and state law. A Franchisee's books and records shall not constitute public records, except to the extent required by federal and state law. To the extent a Franchisee considers any books or records that it is required to produce to be confidential or otherwise protected from public disclosure, Franchisee shall designate which documents it views as protected and provide a written explanation to the City of the legal basis for Franchisee's claim of protection.

#### **Section 93.19. Customer Service Requirements.**

(a) A Franchisee shall maintain all parts of its Cable System in good condition and in accordance with standards generally observed by the cable television industry. Sufficient employees shall be retained to provide safe, adequate, and prompt service for all of its Subscribers and facilities.

(b) Cable System Office. Unless this requirement is expressly waived or modified by a Franchise Agreement, a Franchisee shall maintain a Subscriber service center located within the City, which shall include a place where Subscribers may pay their bills, pick up and return converters or other equipment and initiate installations or other action with respect to Cable Service. This service office shall be open during Normal Business Hours, as defined below,



which as of the effective date of this Ordinance, are from 8:00 a.m. to 5:30 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday.

(c) Telephone Availability. Franchisee shall maintain a publicly-listed local, toll-free telephone number and employ a sufficient number of telephone lines, knowledgeable personnel and answering equipment to allow reasonable access by Subscribers and members of the public to contact the Franchisee on a full-time basis, twenty-four (24) hours per day, seven (7) days per week including holidays. Knowledgeable, qualified Franchisee representatives will be available to respond to Subscriber telephone inquiries. Franchisee shall comply with the telephone answer time standards set forth in Subsection (d) below.

(d) Franchisee shall answer all Subscriber service and repair telephone calls made under Normal Operating Conditions, as defined below, within thirty (30) seconds, including wait time and within an additional thirty (30) seconds to transfer the call. Under Normal Operating Conditions, Subscribers shall receive a busy signal less than three (3) percent of the time. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis.

(e) Franchisee must meet each of the following standards no less than ninety-five (95) percent of the time under Normal Operating Conditions as measured on a quarterly basis:

(1) Standard installation work shall be performed within seven (7) business days after an order has been placed except in those instances where a Subscriber specifically requests an installation date beyond the seven (7) business day period. "Standard" installations are up to one hundred and twenty-five (125) feet from the existing distribution System. If scheduled installation is neither started nor completed as scheduled, the Subscriber will be telephoned by an employee of the Franchisee the same day. If the call to the Subscriber is not answered, an employee of the Franchisee shall telephone the Subscriber the next day;

(2) Excluding conditions beyond the control of the Franchisee, the Franchisee will respond to service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Other service problems will be responded to promptly and in no event later than forty-eight (48) hours after the problem becomes known. All service interruptions and service problems within the control of Franchisee will be corrected within seventy-two (72) hours after receipt of a complaint;

(3) The appointment window alternatives made available for installations, service calls, repairs, and other installation activities will be either a specific time, a four-hour time block during Normal Business Hours, or at the election and discretion of the Subscriber, "all day;"



(4) Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment; and

(5) If, at any time, an installer or technician is running more than 30 minutes late for a scheduled appointment, an attempt to contact the Subscriber will be made and the appointment rescheduled as necessary at a time which is convenient for the Subscriber.

(f) For purposes of this Section 93.19, the term "Normal Business Hours" shall mean those hours during which most similar businesses in the community are open to serve Subscribers, which as of the effective date of this Ordinance, are from 8:00 a.m. to 5:30 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturday, or as otherwise defined by the FCC. In all cases, Normal Business Hours shall include either some evening hours at least one night per week or some weekend hours. The term "Normal Operating Conditions" means those service conditions which are within the control of the Franchisee, or as otherwise defined by the FCC. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee shall include, but are not limited to, special promotions, pay-per-view events, rate increase, regular peak or seasonal demand periods, and routine maintenance or upgrade of the Cable System.

(g) Disconnection.

(1) Voluntary Disconnection.

a. A Subscriber may terminate service at any time.  
b. A Franchisee shall promptly disconnect any Subscriber who so requests from the Franchisee's Cable System. No period of notice prior to voluntary termination of service may be required of Subscribers by any Franchisee. So long as the Subscriber returns equipment to Franchisee's service center located in the City or makes available to Franchisee to pick up within three (3) business days of the disconnection, no charge may be imposed by any Franchisee for such voluntary disconnection or for any Cable Services delivered after the date of disconnection request.

c. A Subscriber may be asked, but not required, to disconnect the Franchisee's equipment.

d. Any security deposit and/or other funds due the Subscriber shall be refunded on disconnected accounts after the converter has been recovered by the Franchisee. The refund process shall take a maximum of forty-five (45) days from the date disconnection was requested to the date the Subscriber receives the refund.

(2) Involuntary Disconnection. If a Subscriber fails to pay a monthly Subscriber or other fee or charge, the Franchisee may disconnect the Subscriber's service outlet;

however, such disconnection shall not be effected until forty-five (45) days after the date on which the applicable monthly bill was sent to the Subscriber and advance written notice of intent to disconnect to the Subscriber in question. The notice of delinquency and impending termination may be part of a billing statement provided that the message is in bold or large type or other similar manner designed to bring the information to the Subscriber's attention. If the Subscriber pays within forty-five (45) days after the date on which the applicable monthly bill was sent and after notice of disconnection has been given, the Franchisee shall not disconnect. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate Cable Service. Franchisee reserves the right to deny Cable Service to any Subscriber who has been repeatedly disconnected for nonpayment of such services to the extent such rights are consistent with applicable state and federal law.

(3) With respect to any disconnection, whether requested or involuntary, a Franchisee shall comply with the rules and regulations of the FCC and applicable law regarding ownership, sale, removal and abandonment of home wiring.

(h) Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible. Franchisee shall use its best efforts to insure that such interruptions shall occur only during the hours of 1:00 a.m. to 6:00 a.m. Franchisee shall maintain a written log for all intentional service interruptions.

(i) Franchisee shall notify the City Manager or designee immediately if a service interruption affects two hundred (200) or more Subscribers for a time period greater than four (4) hours.

(j) Franchisee shall cause all its field employees to wear a picture identification badge indicating their employment by Franchisee. This badge shall be clearly visible to the public.

(k) A Franchisee shall develop written procedures for the investigation and resolution of all Subscriber or City resident complaints that are received by the City. Such procedures shall be submitted to the City Manager or designee. A Subscriber or City resident who has not been satisfied by following the Franchisee's procedures may file a written complaint with the City Manager or designee who will investigate the matter and in consultation with the Franchisee, as appropriate, attempt to resolve the matter. A Franchisee's performance in resolving Subscriber and resident complaints in a fair and equitable manner will be considered in connection with the Franchisee's renewal application. Franchisee shall maintain a complete list of all complaints received during the previous twelve (12) months from Subscribers that required a service call and were not resolved within seven (7) days of receipt and the measures taken to resolve them. This list shall be compiled on a quarterly basis and, if such unresolved complaints exist,

submitted to the City upon request. In providing such information, Franchisee shall be obligated to protect Subscriber privacy in accordance with federal law.

(l) Franchisee shall permit the City Manager or designee to inspect and test the Cable System's technical equipment and facilities upon reasonable notice which shall be not less than seventy-two (72) hours except in the case of an emergency, as determined by the City Manager or designee.

(m) Franchisee shall abide by the following requirements governing communications with Subscribers, bills and refunds:

(1) Each Franchisee shall provide to Subscribers written information in each of the following areas at the time of installation, or at least once annually, and at any future time upon request by the Subscriber:

- a. How to use the Cable Service;
- b. Installation and service maintenance policies;
- c. The products and services offered;
- d. Prices and service options;
- e. Channel positions of programming carried on the Cable System;
- f. The Franchisee's procedures for the receipt and resolution of Subscriber complaints and the Franchisee's address and telephone number to which complaints may be reported if not otherwise provided.
- g. The telephone number and address of the City's office designated to handle cable television complaints and inquiries;
- h. The availability of a "lock-out" device;
- i. The Franchisee's information collection and disclosure policies for the protection of a Subscriber's privacy.

(2) In addition, each Franchisee shall provide written notice in its monthly billing, at the request of the City Manager, of any City meeting regarding requests or applications by the Franchisee for renewal, transfer or modification of its license. The City Manager shall make such a request in writing, with reasonable notice prior to the mailing of any billing by Franchisee, such that Franchisee's regular billing cycle shall not be interrupted. To the extent that any notice requested by the City would exceed the messaging limitations of the Franchisee's billing system and would thus cause the Franchisee to print and insert a separate document into the bill, the City may be requested to pay printing costs and incremental postage expenses for such notice.

(3) Franchisee's bills will be clear, concise and understandable.

(4) Refund checks will be issued promptly, but no later than the earlier of forty-five (45) days or the Subscriber's next billing cycle following the resolution of a refund request, or the return of the equipment supplied by the Franchisee if Cable Service is terminated.

(5) Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

(6) A Franchisee shall provide Subscribers, the City Manager, and the City Commission with at least thirty (30) days' advance written notice of any changes in rates, charges, channel lineup, or initiations or discontinuations or changes of Cable Services offered over the Cable System if such change is within the control of the Franchisee, and in accordance with FCC regulations.

(n) A Franchisee shall, upon an affected Subscriber's request, provide a pro-rated 24-hour credit to the Subscriber's account for any period of four (4) hours or more within a 24-hour period during which a Subscriber experienced an outage of service or substantial impairment of service, whether due to a Cable System malfunction or other cause.

(o) Billing.

(1) The Franchisee's first billing statement after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.

(2) The Franchisee's billing statement must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(3) The Franchisee's billing statement must show a specific payment due date. Any balance not received by the due date may be assessed a late charge consistent with applicable law. The late charge will appear on the following month's billing statement.

a. Franchisee shall provide reasonable notice to the City and Subscribers of the amount of any processing fees for late payments and the manner of imposing such fees. Any late fee that may be imposed shall be in an amount and manner consistent with applicable state and federal law. Late charges on unpaid bills shall not exceed Five Dollars (\$5.00). Such fee shall be deemed to represent the Franchisee's reasonable administrative costs, and in no event shall exceed eighteen percent (18%) per annum on the unpaid balance or the maximum amount of interest allowed by law. If a Subscriber disputes a bill on or before the due date, the Franchisee shall waive a late fee during the period until a final resolution of the dispute is agreed upon between the Franchisee and the Subscriber.

b. Subscribers shall not be charged a late fee or otherwise penalized for any failure by the Franchisee, its employees, or contractors, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

(4) The Franchisee must notify the Subscriber that he or she can remit payment in person at the Franchisee's office in the City and inform the Subscriber of the address of that office.

(p) Alteration of Service. Except as incident to an upgrade or rebuild of the Cable System, a Franchisee may not substantially alter the Cable Service being provided to a Subscriber (including by re-tiering, restructuring a tier or otherwise) without the express affirmative permission of such Subscriber, unless it complies with this subsection.

(1) If a Franchisee wishes to alter the Cable Service being provided to a Subscriber (including by re-tiering, restructuring a tier or otherwise) in such a way that the Subscriber will no longer be able to obtain the same package of Cable Services then the Franchisee must provide the Subscriber with thirty (30) days' notice of such alteration, explain the substance and the full effect of the alteration, and provide the Subscriber the right within the thirty (30) day period following notice, to opt to receive any combination of Cable Services offered by the Franchisee.

(2) Except as provided herein or under applicable federal, state or local law, no charge may be made for any Cable service or product which the Subscriber has not affirmatively indicated, in a manner separate and apart from payment of the regular monthly bill that the Subscriber wishes to receive.

(q) Franchisee shall certify in writing to the City as of January 1st and July 1st of each year, based upon internal due diligence by the Franchisee, that to the best of Franchisee's knowledge it is in substantial compliance with the standards set forth in this Section 93.19, said certification to be made as of a date within thirty (30) days of January 1st and July 1st. At the request of the City, for reasonable cause including but not limited to discrepancies between the reports provided to the City and the certification required herein, the Franchisee shall submit such documentation, as may be required, to demonstrate Franchisee's compliance with this Section 93.19. This documentation shall be submitted within thirty (30) days of the Franchisee's receipt of the City's request.

(r) Notwithstanding anything to the contrary, Franchisee shall not incorporate within any bulk residential subscriber contract the term of the Franchise granted by the City as the length of the term of a bulk contract(s) Franchisee shall make available to all residential bulk Subscribers the same level of service provided to Franchisee's residential Subscribers in the

City, including, but not limited to, the requirements of Section 93.19 herein, unless the parties to the bulk contract have expressly agreed otherwise in writing.

(s) Responsibility for the administration of this Ordinance and any Franchise granted pursuant to this Ordinance, and for the resolution of all complaints against the Franchisee regarding the quality of service, equipment malfunctions, and related matters, is hereby delegated to the City Manager or his designee, who is empowered, among other things, to settle, or compromise any controversy arising from operations of the Cable System by Franchisee, either on behalf of the City or any Subscriber, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is alleged to be in non-compliance with this Ordinance or a Franchise Agreement, the City Manager or his designee shall have the power to require the Franchisee to provide service consistent with the terms of the Franchise, if in the opinion of the City Manager or his designee such request for service is reasonable. Any person aggrieved by a decision of the City Manager, including the Franchisee, may appeal the matter to the City Commission for hearing and determination. The City Commission may accept, reject or modify the decision of the City Manager. No adjustment, settlement, or compromise, whether instituted by the City Manager or by the City Commission, shall be contrary to the provisions of this Ordinance or any Franchise issued pursuant to this Ordinance and neither the City Manager nor the City Commission, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of the Ordinance or of the Franchise Agreement, or to interfere with any rights of Subscribers or any Franchisee under applicable federal, or state law or private contract.

(t) The City Manager or designee shall have the authority to assess fines for violations of this Section 93.19 in accordance with the schedule set out below or as otherwise provided in a Franchise Agreement. The fines listed are to be assessed on a per violation basis with each day of a continuing violation constituting a separate violation, except for those customer service standards set forth in Subsections (d) and (e) above which are measured on a quarterly basis. With respect to such standards that are measured on a quarterly basis, the fines for such violations shall be assessed on a quarterly basis as follows; \$5,000 per quarter if the Franchisee falls below such standards by 10% or less; \$10,000 per quarter if the Franchisee falls below such standards by 20% or less and \$15,000 per quarter if the Franchisee falls below such standards by 25% or more. For example, if Franchisee has answered the telephone standards set forth in Subsection (d) on a quarterly basis 75% of the time, instead of the 90% required herein, the quarterly fine shall be \$10,000. Prior to assessing any fines set forth in the schedule below, the City Manager or designee shall following the procedures set forth in Section 93.25 of this Ordinance.

#### **SCHEDULE OF FINES**

**Single Violation of:**

**Maximum Fines**

(a)	Section 93.19 (a), hereof.	\$ 500.00
(b)	Section 93.19 (b), hereof.	\$ 500.00
(c)	Section 93.19 (c), hereof.	\$as detailed above
(d)	Section 93.19 (d), hereof.	\$as detailed above
(e)	Section 93.19 (e)(1-5), hereof.	\$ as detailed above
(f)	Section 93.19 (g)(1-3), hereof.	\$ 250.00
(g)	Section 93.19 (h), hereof.	\$ 350.00
(h)	Section 93.19 (i), hereof.	\$ 350.00
(i)	Section 93.19 (j), hereof.	\$ 350.00
(j)	Section 93.19 (k), hereof.	\$ 500.00
(k)	Section 93.19 (m)(1-5), hereof.	\$ 250.00
(l)	Section 93.19 (m)(6), hereof.	\$ 500.00
(m)	Section 93.19 (n), hereof.	\$ 250.00
(n)	Section 93.19 (o), hereof.	\$ 250.00
(o)	Section 93.19 (p), hereof.	\$ 250.00
(p)	Section 93.19 (q), hereof.	\$ 250.00
(q)	Section 93.19 (s), hereof.	\$ 250.00



(1) Prior to assessing a fine, the City Manager or designee shall consider any justification or mitigating factor advanced in Franchisee's written response, including, but not limited to rebates or credits to the Subscriber, a cure or commencement of a cure of the violation, and the payment of any penalty to Palm Beach County for the same violation. The City Manager or designee may, after consideration of the response of the Franchisee, waive or reduce any proposed fine.

(2) Subsequent to the notice of proposed fine to Franchisee and consideration of the Franchisee's response, if any, and after following the procedures set forth in Section 93.25 hereof, the City may issue an assessment of fine. Any fine will commence as of the date of the written notice specifying the violation at issue. The fine shall be paid within thirty (30) days of written notice of assessment to the Franchisee. The City may enforce payment of the refund or fine in any court having jurisdiction or if Franchisee challenges the assessment in a court of competent jurisdiction, within thirty (30) days of a final non-appealable decision that the assessment is valid. This fine shall constitute liquidated damages to the City for the violation and the City may enforce payment of the fine in any court having jurisdiction. It is the intent of the City to determine fines as a reasonable estimate of the damages suffered by the City and/or its Subscribers, whether actual or potential, and may include without limitation, increased costs of administration, enforcement and other damages difficult to measure.

(3) Any Person who intentionally files a false complaint against a Franchisee shall be subject to a fine, payable to the City, in the amount of \$50 for the first violation and \$100 for each subsequent violation.

(4) Intentional misrepresentation by a Franchisee in any response to a notice of proposed refund and/or fine shall be grounds for revocation of the Franchise.

(5) In addition to complying with the customer service standards set forth in this Ordinance or in any Franchise issued pursuant to this Ordinance, a Franchisee shall comply with all customer service standards applicable to Cable Systems of the FCC and any other applicable law governing the operations of the Cable System within the City. If during the term of any Franchise granted pursuant to this Ordinance, the FCC modifies the customer service standards applicable to Franchisee, the City may modify this Ordinance to reflect any such new customer service standards.

(u) The City expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfers of any Franchise Agreement.

(v) The City and Franchisee recognize that the customer service standards set forth in this Section 93.19 reflect the current operating procedures of Franchisee. If Franchisee's current operating procedures change during the term of any Franchise granted pursuant to this Ordinance, the City agrees to meet with Franchisee to discuss appropriate modifications to such standards and to consider such reasonable modifications to the standards set forth herein as requested by a Franchisee to reflect any such new operating procedures. Upon request of the Franchisee, the City shall also discuss with Franchisee the need to continue such regulation in light of the competition that Franchisee may face in the provision of Cable Services to Subscribers and to consider such reasonable modifications to the customer service standards set forth herein in light of the competitive environment. Notwithstanding anything to the contrary, Franchisee shall be obligated to comply with this Section 93.19 unless modifications are agreed upon by the City and Franchisee in writing.

**Section 93.20. Subscriber Privacy.**

(a) A Franchisee shall at all times protect the privacy of all Subscribers to the full extent required by Section 631 of the Communications Act, 47 U.S.C. § 551 and state law.

(b) Unless otherwise permitted by federal or state law, neither the Franchisee nor its agents or employees shall, without the prior and specific written authorization of the Subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any Subscriber or Subscribers, or any information which identifies the individual viewing habits of any Subscriber or Subscribers.

**Section 93.21. Discrimination Prohibited.**

(a) No Franchisee in its rates or charges, or in the availability of the services or facilities of its Cable System, or in any other respect, may unlawfully discriminate against any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer promotional or discount rates to certain, but not all, Subscribers for a limited time without violating the provisions of this Section 93.21. A Franchisee shall not deny, delay, or otherwise burden service or discriminate against Subscribers or users on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status, or political affiliation, except for discounts for senior citizens, the economically disadvantaged or handicapped that are applied in a uniform and consistent manner. A Franchisee may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.

(b) A Franchisee shall not deny Cable Service to any potential Subscriber because of the income of the residents of the area in which the Subscriber resides.

(c) The Franchisee shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

**Section 93.22. Use of Streets.**

(a) Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a Franchisee shall be done under the direction of the City under permits issued for work by the proper officials of the City, and shall be done in such manner as to give the least inconvenience to the inhabitants of the City. A Franchisee shall, at its own cost and expense, and in a manner approved by the City, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also make and keep full and complete plats, maps and records showing the exact locations of its facilities located within the public Streets, ways, and easements of the City.

(b) Except to the extent required by law, a Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the City by reason of traffic conditions, public safety, Street construction, Street resurfacing or widening, change of Street grade, installation of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of municipal or public utility improvements; provided, however, that the Franchisee shall, in all such cases, have the privilege of abandoning any property in place.

(c) A Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the City, in which case no such payment shall be required. The Franchisee shall be given not less than five (5) calendar days' advance notice to arrange for such temporary wire changes.

(d) A Franchisee shall have the authority to trim the trees or other natural growth upon and overhanging the Streets so as to prevent the branches of such trees from coming in contact with the wires, cables and other equipment of the Franchisee, except that, at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Franchisee.

(e) A Franchisee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible. Copies of agreements for use of conduits or other facilities shall be filed with the City as required by the Franchise Agreement or upon City request.

(f) All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The City may issue such rules and regulations concerning the installation and maintenance of a Cable System installed in, on, or over the Streets, as may be consistent with this Ordinance and the Franchise Agreement.

(g) All safety practices required by law shall be used during construction, maintenance and repair of a Cable System. A Franchisee shall not place facilities, equipment or fixtures where they will interfere with any gas, electric, telephone, water, sewer or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the City of their use of any Street or any other public rights-of-way.

(h) A Franchisee shall, at all times:

(1) Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the City's Building Code and Electrical Safety Ordinances and any other applicable Building or Electrical Safety Code, and in such manner that they will not interfere with any installations of the City.

(2) Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures, lines, equipment, and connections in, over, under, and upon the Streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located.

(i) On Streets where both electrical and telephone utility wiring are located underground, either at the time of initial construction of a Cable System or at any time thereafter, a Franchisee's cable shall also be located underground at the Franchisee's expense. Between a Street and a subscriber's residence, a Franchisee's cable must be located underground if both electrical and telephone utility wiring are located underground. If either electric or telephone utility wiring is aerial, a Franchisee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost of such installation over and above the cost of aerial installation.

(j) In the event the use of any part of a Cable System is discontinued for any reason so as to result in Franchisee's failure to provide service to any portion of its Franchise Area for a continuous period of twelve (12) months, or in the event such System or property has been installed in any Street without complying with the requirements of this Ordinance or a Franchise Agreement, or the Franchise has been terminated, canceled or expired, the Franchisee, within thirty (30) days after written notice by the City, shall commence removal from the Streets of all such property as the City may require.

(k) The City may extend the time for the removal of Franchisee's equipment and facilities for a period not to exceed one hundred eighty (180) days, and, thereafter, such equipment and facilities may be deemed abandoned.

(l) In the event of such removal or abandonment, the Franchisee shall restore the area to as good a condition as prior to such removal or abandonment.

### **Section 93.23. Renewal of Franchise.**

Renewal shall be conducted in a manner consistent with Section 626 of the Communications Act, 47 U.S.C., § 546. The following additional requirements, unless in conflict with applicable law, shall apply:

(a) Upon completion of the review and evaluation process set forth in Section 626(a)(1)(2) of the Communications Act, 47 U.S.C., § 546, should that process be invoked, the City shall notify the Franchisee by certified or registered mail that it may file a formal renewal application in the form of a renewal proposal. The notice shall specify the information to be included in the renewal Application and the deadline for filing the Application, which shall be no earlier than thirty (30) calendar days following the date of the notice.

(1) The Application shall comply with the requirements of Section 93.08 hereof, to the extent applicable to franchise renewals and provide the specific information requested in the notice or such other information as is reasonably designated by the City in the notice requesting a formal renewal proposal. If the Franchisee does not submit a formal renewal Application by the date specified in the City's notice to the Franchisee given pursuant to this subsection, which shall in no event be less than 120 days, the City may take such action as appropriate under law.

(2) Upon receipt of the formal renewal Application, the City shall publish notice of its receipt and make copies available to the public. The City, following prior public notice of no less than ten (10) days, may hold one or more public hearings on the renewal Application.

(b) After the public hearing(s) on the renewal Application is held, the City Commission may either award a Franchise pursuant to a request for proposal, and thereby renew the Franchise; or only after a public hearing, properly noticed, pass a resolution that makes a preliminary assessment that sets forth the grounds that the Franchise should not be renewed.

(c) If a preliminary assessment is made that a Franchise should not be renewed, at the request of the Franchisee or on its own initiative, the City will commence a proceeding in accordance with Section 626(c) of the Communications Act, 47 U.S.C., § 546(c) to address the

issues set forth in Section 626(c)(1)(A)-(D) of the Communications Act, 47 U.S.C., § 546(c)(1)(A)-(D). Any denial of a proposal for renewal that has been submitted in compliance with 47 U.S.C. § 546(b) shall be based on one or more adverse findings made with respect to the factors described in 47 U.S.C. § 546(c)(1)(A)-(D), pursuant to the record of proceedings under 47 U.S.C. § 546(c). The City shall not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise under Section 546(c)(1)(A) or on events considered under Section 546(c)(1)(B) unless the City has provided the Franchisee with notice and opportunity to cure, or in any case in which it is documented that the City has waived its right to object, or the Franchisee gives written notice of a failure or inability to cure and the City fails to object within a reasonable time after receipt of such notice.

(d) Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in Section 626(a) of the Communications Act, 47 U.S.C., § 546(a), or submitted within such time frame and the parties agree that the informal process shall be first initiated, shall be deemed an informal proposal for renewal and shall be governed in accordance with Section 626(h) of the Communications Act, 47 U.S.C., § 546(h). The City may hold one or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the City Commission shall determine whether the Franchise should be renewed and the terms and conditions of any renewal. If the City Commission grants a renewal Application, the City and the Franchisee shall agree on the terms of a Franchise Agreement, pursuant to the procedures specified herein, before such renewal becomes effective.

(e) If renewal of a Franchise is lawfully denied, the City may acquire ownership of the Cable System or effect a transfer of ownership of the Cable System to another person upon approval of the City Commission pursuant to Section 547 of the Communications Act. The City may not acquire ownership of the System or effect a transfer of ownership of the Cable System while an appeal of a denial for renewal is pending in any court pursuant to the Communications Act, 47 U.S.C. § 546(e).

(f) If renewal of a Franchise is lawfully denied and the City does not purchase the Cable System or approve or effect a transfer of the Cable System to another Person, and no appeal to a court is pending, the City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.

#### **Section 93.24. Transfers.**

(a) No transfer, sale or assignment of any interest in a Franchise shall occur without prior City approval, which shall not be unreasonably withheld.



(b) An Application for a transfer, sale or assignment of any interest of a Franchise shall meet the requirements of Section 93.08 hereof, and provide complete information on the proposed transaction, including, but not limited to, details on the legal, financial, technical and other material and lawful qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. Except in the case of a pro forma transfer as defined herein, the Application shall provide, at a minimum, the information required in Section 93.08 or such other information as is specified in a Franchise Agreement in lieu of the information required in Section 93.08. Upon written request, the Applicant shall provide to the City as additional information any and all written information, other than the information required to be provided by this Ordinance and the Franchise Agreement, that has been provided to Palm Beach County in connection with the transfer if such information is relevant to the City. The City hereby reserves the right to request such additional information as it may reasonably require to consider the Application, however, such requests shall not have the effect of tolling the 120 day automatic approval period provided by federal law. However, nothing herein shall be deemed a waiver of the City's right to deny approval of a transfer within the 120 day period.

(c) The Application process shall not include any pro forma transfers, as defined herein, that are related solely to any restructuring, recapitalization or refinancing which does not change the effective control of the Franchisee or to any mortgages and pledges of Franchisee's securities, but shall require proper notice to the City pursuant to the terms of the Ordinance or the Franchise Agreement.

(d) In making a determination on whether to grant an Application for a transfer of a Franchise, the City Commission shall consider the legal, financial, technical and other lawful and material qualifications of the transferee to operate the Cable System; whether the incumbent cable operator is in substantial compliance with the material terms of its Franchise Agreement and this Ordinance and, if not, the proposed commitment of the transferee to cure such noncompliance; and whether operation by the transferee would adversely affect Cable Services to Subscribers. The City Commission shall not unreasonably withhold approval to any such transfer.

(e) No franchise transfer Application shall be granted unless the transferee, if the Franchise holder, agrees in writing to abide by and accept all terms of this Ordinance and a Franchise Agreement, and to assume all obligations and liabilities of the previous Franchisee, whether known or unknown. If such transferee will not be the holder of the Franchise, such transferee will sign an acknowledgement ensuring compliance by the Franchisee with the Franchise Agreement and this Ordinance. The City shall certify to Franchisee, upon request, all issues of Franchisee's performance that are known and pending.



(f) Subject to applicable law, approval by the City of a transfer of a Franchise does not constitute a waiver or release of any of the rights of the City under this Ordinance or the Franchise Agreement, whether arising before or after the date of the transfer.

(g) Pursuant to the procedures set forth in Section 93.25, failure to obtain the consent of the City with respect to this Section 93.24 may result in the imposition of liquidated damages in the amount of one thousand five hundred dollars (\$1,500) per day for failure to receive such consent of the City for a transfer or change of control; provided, however, that no such liquidated damages shall be owed if the City's denial of consent is unlawful or unreasonable.

**Section 93.25. Franchise Violations.**

(a) In addition to any other remedies available at law or equity, the City may apply any one or combination of the following remedies in the event a Franchisee violates a provision of this Ordinance or a Franchise Agreement after following the procedures set forth in Subsections (d-h) below.

(1) Impose liquidated damages in an amount of not less than Two Hundred Fifty Dollars (\$250) per day or part thereof per individual violation, or as otherwise expressly provided in this Ordinance or in a Franchise Agreement. Payment of liquidated damages by the Franchisee will not relieve the Franchisee of its obligation to comply with the Franchise Agreement and the requirements of this Ordinance, provided, however, that cure of the alleged violation and payment of liquidated damages pursuant to this section shall be considered full and final resolution of the alleged violation and may not be considered as an event of noncompliance for such period.

(2) Revoke the Franchise pursuant to the procedures specified in Section 93.26 hereof.

(3) In addition to or instead of any other remedy provided herein, the City may seek equitable relief from any court of competent jurisdiction.

(b) In determining which remedy or remedies are appropriate, the City shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations and such other matters as the City determines are appropriate to the public interest.

(c) Failure of the City to enforce any requirements of a Franchise Agreement or this Ordinance shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

(d) If the City (or the City Manager or designee with respect to Section 93.19 of this Ordinance) believes that Franchisee has failed to perform any obligation under this Ordinance or a Franchise Agreement or has failed to perform in a timely manner, the City shall notify Franchisee in writing, stating with reasonable specificity the nature of the alleged default. Franchisee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with Subsection (e), below; or

(2) Cure the default (except Franchisee shall have ninety (90) days with respect to customer service standards measured on a quarterly basis); or

(3) Notify the City that Franchisee cannot cure the default within the thirty (30) days (or ninety (90) days where applicable), because of the nature of the default. In the event the default cannot be cured within the applicable time frame, Franchisee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City shall set a meeting in accordance with Subsection (e) below to determine whether additional time beyond the time specified above is indeed needed, and whether Franchisee's proposed completion schedule and steps are reasonable.

(e) If Franchisee does not cure the alleged default within the cure period stated above, or by the projected completion date under Subsection (d)(3), or denies the default and requests a meeting in accordance with (d)(1), or the City orders a meeting in accordance with Subsection (d)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Franchisee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Franchisee's receipt of notice of the meeting. At the meeting, Franchisee shall be provided an opportunity to be heard and to present evidence in its defense.

(f) If, after the meeting, the City determines that the Franchisee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(g) If, after the meeting, the City determine that a violation exists and that Franchisee has not corrected the same in a satisfactory manner or did not promptly commence and diligently process to correct the violation, the City may:

(1) Impose penalties and/or liquidated damages in accordance with Subsection (a) above and withdraw such amount from the security fund required in this Ordinance or a Franchise Agreement as monetary damages;

(2) Recommend the revocation of this Franchise pursuant to the procedures in Section 93.26 below; or

(3) Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

(h) If the City (or the City Manager or designee in the case of fines assessed in accordance with Section 93.19 of this Ordinance) elects to assess liquidated damages in accordance with this Section 93.25, then such election shall bar the City from instituting revocation proceedings for a period of one hundred twenty (120) days. Thereafter, if the Franchisee remains in non-compliance with the requirements of this Ordinance or a Franchise Agreement, the City may institute revocation proceedings against the Franchisee in accordance with the provisions of Section 93.26 below.

(1) Notwithstanding anything to the contrary, any fines/liquidated damages imposed herein shall be calculated as accruing from the date of written notice to the Franchisee of the violation.

(2) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City Commission, provided that any final determination may be subject to appeal to a court of competent jurisdiction under applicable law.

**Section 93.26. Revocation.**

(a) The City may revoke and rescind all rights and privileges associated with a Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Franchisee fails to perform any material obligation under this Ordinance or in a Franchise Agreement between under the City and Franchisee;

(2) If Franchisee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Franchisee practices any fraud or deceit upon the City or Subscribers; or

(4) If Franchisee willfully makes a material misrepresentation of fact in the Application for or negotiation of a Franchise, a renewal or a transfer.

(b) Prior to forfeiture or termination of the Franchise, the City shall give written

notice by certified mail to the Franchisee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. If within thirty (30) days following receipt of such written notice from the City to the Franchisee, the Franchisee has not cured such violation or breach, or has not entered into a written agreement with the City on a program to cure the violation, or has not demonstrated that the violation is incurable, or has filed a written response to the City demonstrating that no violation has occurred, the City may then seek a termination of the Franchise by the City Commission in accordance with this subsection.

(c) Any proceeding under the subsection above shall be conducted by the City Commission and open to the public. Franchisee shall be afforded at least thirty (30) days prior written notice of such proceeding.

(1) At such proceeding, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Commission shall hear any Persons interested in the revocation, and shall allow Franchisee an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Commission shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the security fund forfeited; or if the breach at issue is capable of being cured by Franchisee, direct Franchisee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Commission determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Franchisee. Franchisee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within one hundred twenty (120) days of the date of the decision.

(3) Franchisee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Commission may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

(d) If the City revokes a Franchise, or if, for any other reason, a Franchisee abandons the Cable System, terminates or fails to operate or maintain service to its Subscribers for a period of thirty (30) days, the following procedures and rights are effective:

(1) The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.

(2) The City, by resolution of the City Commission, may acquire ownership, or effect a transfer of the Cable System, in accordance with Section 627 of the Communications Act.

(3) If a Cable System is abandoned by a Franchisee, the City may sell, assign or transfer all or part of the assets of the System.

(e) Where the City has issued a Franchise specifically conditioned in the Franchise Agreement upon the completion of construction, System upgrade or other specific obligation by a specified date, failure of the Franchisee to complete such construction or upgrade, or to comply with such other specific obligations as required may result in revocation of the Franchise, unless the City, at its discretion and for good cause demonstrated by the Franchisee, grants an extension of time.

(f) No adverse action against a Franchisee may be taken by the City pursuant to this section except as consistent with the procedures set forth in this section or as otherwise provided by applicable law, including a noticed public hearing at which the Franchisee is given an opportunity to participate.

**Section 93.27. Continuity of Service Mandatory.**

(a) It is the right of all Subscribers to receive all available services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.

(b) In the event of a termination or transfer of a Franchise for whatever reason, the Franchisee shall ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. The Franchisee shall cooperate with the City to operate the System for a temporary period following termination or transfer as necessary to maintain continuity of service to all Subscribers. The temporary period will not exceed six (6) months without the Franchisee's written consent. During such period, the Cable System shall be operated under such terms and conditions as the City and the Franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to Subscribers and that will provide reasonable compensation to the cable operator.

(c) In the event a Franchisee fails to operate the System for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate

the System or designate an operator until such time as the Franchisee restores service under conditions acceptable to the City or until a permanent operator is selected. If the City is required to fulfill this obligation for the Franchisee, the Franchisee shall reimburse the City for all costs or damages resulting from the Franchisee's failure to perform. Additionally, the Franchisee will cooperate with the City to allow City employees and/or City agents access to the Franchisees' facilities and premises for purposes of continuing System operation.

**Section 93.28. Rates.**

(a) At such time as federal law permits rate regulation, the City reserves all rights to implement and impose such regulation, and may do so by amendment to this Ordinance, by separate ordinance, by amendment to a Franchise Agreement, or in any other lawful manner.

(b) Nothing in this Ordinance shall prohibit the City from regulating rates for cable services to the full extent permitted by law.

(c) Should a Franchisee desire to change any rate or charge, it shall comply with all laws with respect thereto.

(d) Notwithstanding anything to the contrary, a Franchisee shall provide to the City Manager notice of any and all changes to all Subscriber rates no less than thirty (30) days prior to the effective date of such change.

**Section 93.29. Performance Evaluation.**

The City may conduct periodic, but not more than once during any twelve (12) month period unless for specific cause, performance evaluations of a Franchisee as the City determines is necessary. A Franchisee shall cooperate with these evaluations reasonably and in good faith. If the City implements a survey of cable Subscribers in connection with a performance evaluation, the City may require a Franchisee to distribute the City's questionnaire to its Subscribers at the City's expense, provided that the Franchisee shall have the right to review the questionnaire prior to its distribution by Franchisee. Upon request and upon reimbursement of the City's copying costs, the Franchisee may inspect or receive copies of all responses.

**Section 93.30. Administration.**

(a) The City Manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and Franchise Agreements. The City Manager or designee shall be empowered to take all administrative actions on behalf of the City, except for those actions specified in this Ordinance that are reserved to the City Commission. The City Manager or designee may recommend that



the Commission take certain actions with respect to the Franchise. The City Manager or designee shall keep the City Commission apprised of developments in cable and provide the City Commission with assistance, advice and recommendations as appropriate.

(b) To the extent permitted by federal and state law, the City Commission shall have the sole authority to regulate rates for cable services, grant Franchises, authorize the entering into of Franchise Agreements, modify Franchise Agreements, renew or deny renewal of Franchises, revoke Franchises, and authorize the transfer of a Franchise.

**Section 93.31. Force Majeure.**

In the event a Franchisee's performance of or compliance with any of the provisions of this Ordinance or the Franchisee's Franchise Agreement is prevented by a cause or event not within the Franchisee's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that Franchisee uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance and any Franchise Agreement granted or renewed hereunder, causes or events not within a Franchisee's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes, loss of utility service not as a result of any action or inaction by Franchisee and restraints imposed by order of a governmental agency or court (unless such order is procured at Franchisee's behest). Causes or events within Franchisee's control, and thus not falling within this section, shall include, without limitation, Franchisee's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Franchisee's directors, officers, employees, contractors or agents.

**Section 93.32. Applicability.**

This Ordinance shall be applicable to all cable Franchises granted, renewed, modified or transferred on or after the effective date hereof, and shall apply to all cable Franchises granted prior to the effective date of this Ordinance, to the full extent permitted by state and federal law.

**Section 93.33. Municipal Cable System Ownership Authorized.**

(a) To the full extent permitted by law, the City may acquire, construct, own and/or operate a Cable System.

(b) Nothing in this Ordinance shall be construed to limit or expand in any way the ability or authority of the City to acquire, construct, own and/or operate a Cable System to the full extent permitted by law.

**Section 93.34.            Reservation of Rights.**

(a)     The City reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

(b)     The City reserves the right to the extent permitted by applicable law to exercise the power of eminent domain to acquire the property of the Franchisee's Cable System. Nothing herein is intended to restrict or expand such rights as granted by the Constitution and laws of the State of Florida.

(c)     The City shall at all times have the right, upon reasonable notice and during normal business hours, to examine and copy a Franchisee's records and to inspect a Franchisee's facilities to the extent needed to monitor a Franchisee's compliance with and performance under this Ordinance and the Franchisee's Franchise Agreement. However, the City shall not copy any records that have been identified as confidential and proprietary pursuant to Ch. 119 Florida Statutes.

**Section 93.35.            Notices.**

All written correspondence between the City and Franchisee shall be delivered via hand delivery, certified mail or such other means so as to provide a return receipt. Notice to the Franchisee shall be deemed effective upon written receipt. Notice to the City shall be effective upon written receipt by the City Manager.

**Section 2.            Repeal of Conflicting Ordinances.**

Ordinance No. 18-03, in its entirety, and all pre-existing ordinances or resolutions or parts thereof conflicting or inconsistent with the provisions of this Ordinance are hereby repealed; provided, however, that nothing in this Ordinance shall be interpreted or construed to terminate or revoke the grant and subsequent amendment of Cable Television Franchise by City Ordinance No. 18-03, until or unless the aforesaid ordinances are superseded or repealed and a Franchise Agreement is entered into or renewed pursuant to this Ordinance.

**Section 3.            Severability.**

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any Person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City

declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

**Section 4. Inclusion in the Code of Ordinances.**

It is the intent of the City of Delray Beach that specific authority is hereby granted to codify this Ordinance. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Delray Beach, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "section," "Ordinances," or any other appropriate word or phrases in order to accomplish such intention.


**Section 5. Effective Date.**

This Ordinance shall take effect and be in force immediately upon its passage and adoption.

PASSED AND ADOPTED in regular session on second and final reading on this the 15<sup>th</sup> day of March, 2005.

ATTEST

  
MAYOR

  
City Clerk

First Reading 2/15/05

Second Reading 3/1/05